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[ORIGINAL CIVIL JURISDICTION]

TERRELL, J.

October 3, 1935.

RE NEO GUAN CHYE, DECEASED.

[SINGAPORE PROBATE No. 288 of 1911]

Ordinance No. 53 (Evidence), Sections 123 and 124—Affidavit for Commissioner of Estate Duties.

The affidavit filed by an executor or administrator for the Commissioner of Estate Duties (commonly called the Collector's Affidavit) is a quasi-confidential document and there is no law or rule which gives to a beneficiary to the Estate the right to inspect the same.

Summons in Chambers.

De Mello for Applicant.

Adrian Clark, Solicitor General, for Commissioner of Estate Duties.

The facts and arguments sufficiently appear from the judgment.

Cur. Ad. Vult.

TERRELL, J.—This is an application by one Neo Hong Kim who alleges that he is a son of the above-named Neo Guan Chye deceased and a beneficiary in his estate. The application is for an order that the Commissioner of Estate Duties, Singapore, be ordered to allow the applicant or his solicitor, or the latter's clerk, to inspect and copy the affidavit for the Commissioner of Stamps filed by the executor Neo Hong Choo. Neo Hong Choo is not a party to the application, which is between two parties neither of whom appear on the record. An objection to this effect was taken by the Acting Solicitor-General who appeared for the respondent, and in my opinion, such objection is conclusive and must in any case result in the application being dismissed.

The parties, however, have asked for a ruling on the merits of the case and arguments were addressed to me thereon. Apart from the question of procedure the question is whether the Commissioner of Estate Duties can be ordered to give inspection of a document contained in an official file. It would appear that it is now the practice of the Commissioner of Estate Duties, who in this respect follows the practice of Somerset House in England, to refuse to disclose the affidavit for the Commissioner of Stamps except with the consent of the person who declared it, or if he is dead, with the consent of his legal personal representative. The Commissioner of Estate Duties has also, on frequent occasions, produced such affidavits in response to a subpoena *duces tecum* when litigation was pending in the Supreme Court. It is true that in the course of correspondence in these proceedings the Commissioner of Estate Duties says that if he were served with such a subpoena he would claim privilege and abide by the decision of the Court, but so far as I am aware no such claim has ever been advanced hitherto.

As regards the nature of the affidavit in question it would appear to fall under the description of a "public document," as defined in section 74 (1) (iii) of the Evidence Ordinance as being a document forming "the record of the act of an executive officer." It differs from an affidavit filed in Court because such affidavit is merely the record of the act of a private party. The affidavit for the Commissioner of Stamps, however, when once it has been accepted, bears upon its face a record of such acceptance in the assessment of the duty and interest payable, and bears the initial or signature of the appropriate executive officer and so becomes a public document.

Mr. de Mello on behalf of the applicant referred me to sections 76-78 of the Evidence Ordinance which deal with proof of public documents, but these sections only refer to the giving of copies of documents "which any person has a right to inspect," and to proof of public documents where they may be proved. These sections do not profess to state the circumstances under which the right to inspect arises or the circumstances under which public documents are admissible in evidence.

The Solicitor-General, on the other hand, relied on sections 123 and 124 of the Evidence Ordinance which read as follows:—

> 123. No one shall be permitted to produce any unpublished official records relating to affairs of State, or to give any evidence derived therefrom, except with the permission of the officer at the head of the Department concerned, who shall give or withhold such permission as he thinks fit, subject, however, to the control of the Governor.
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> 124. No public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interests would suffer by the disclosure.

As regards section 123, I am not called upon to decide whether or not the affidavit relates to "affairs of State" within the meaning of that section. The question may arise if the proper officer, under the instructions of the head of the department, fails to produce such affidavit on subpoena.

As regards section 124, the Solicitor-General fortifies himself with an affidavit by the Treasurer, Singapore, to the effect that the information contained in the affidavit constitutes a communicaton made in official confidence to him or to an officer of his department and that the public interests would suffer by the disclosure of such information.

Now, if this submission is correct, the affidavit is privileged for all purposes and inadmissible in evidence. It would not be competent for the department to allow inspection of such affidavit even at the request of the executor who filed it, and it would not be competent for the Court to subpoena an officer to produce it at the

trial of any action. The Solicitor-General's submission therefore presupposes that the practice followed in England, and for many years in the Colony, is wrong.

Secondly, whether or not the department claimed privilege, it would be the duty of the Court to refuse to admit the affidavit in evidence even if willingly produced by the proper officer having the custody thereof. It would be the bounden duty of the Judge "to have interposed and prevented the admission of such evidence," see *per* Dallas, C.J. in *Home* v. *Bentinck*, 2 B. & B. p. 130 at p. 162, a passage which is quoted with approval by the Lord Chief Baron in *Dawkins* v. *Lord Rokeby*, L.R. 8 Q.B. p. 255, and by Wills, J. in *Hennessy* v. *Wright*, 21 Q.B.D. p. 509 at p. 521.

And thirdly, quite apart from section 123 of the Evidence Ordinance an executor, if sued and even if he had a copy of the affidavit in his possession, would not be allowed to give evidence thereof, as secondary evidence of an inadmissible document is itself inadmissible (see *per* Lord Chelmsford in *Stace* v. *Griffith*, L.R. 2 P.C. p. 420 at p. 425).

I do not wish to express any opinion beyond what has been indicated above, as to whether the Commissioner of Estate Duties could on other grounds refuse to produce the affidavit on subpoena in the course of an administration action. It is to be noted, however that while section 124 of the Evidence Ordinance makes the public officer the sole judge as to whether the disclosure of a confidential document would or would not be contrary to the public interest, it presumes, as a condition precedent, that the document was a communication made to him in official confidence. This is a matter for the Court to decide, see *The Collector of Jampur* v. *Jamma Prasad*, I.L.R. 44 All. p. 360 at p. 365, and for the reasons stated above I do not think that the affidavit for the Commissioner of Stamps is a document made in "official confidence" within the meaning of section 124 of the Evidence Ordinance.

I think, however, that the refusal to produce the affidavit to the appellant can be supported on the narrower ground which is in accordance with the practice of the Inland Revenue Office in England and which is now followed in the Straits Settlements. It is that the affidavit is a quasi-confidential document which it is not the practice of the Stamp Office to disclose to members of the public. The applicant claimed inspection as of right and there is no law or rule which gives him any such right. The applicant is in the position of an outsider who wishes to inspect a letter in another person's custody without the consent either of the owner of the letter or his correspondent.

There is one further aspect of the case which requires consideration. I am quite sensible of the force of the argument addressed to me by Mr. de Mello that a Government department should not put difficulties in the way of beneficiaries discovering from official records what the estate, in which they have a share, consists of, and that if the required information is withheld, a Government office may be protecting dishonest executors for the sole reason that it fears to make a breach in the wall of official reticence. Without commenting on this argument, I think it is a real grievance if beneficiaries cannot ascertain the extent or nature of the deceased's estate without first bringing an administration action, but I think that this grievance could be met if the law provided as in Scotland, that an inventory of the estate should be annexed to the probate or letters of administration, and I suggest that the proper authorities should consider whether such an amendment is not desirable.

As regards the present application, I think it fails both as regards the procedure adopted and on the merits, and should be refused with costs.

Application refused with costs.

Solicitor for the Applicant—*A. de Mello.*

[ORIGINAL CIVIL JURISDICTION.]

TERRELL, J.

September 12, 1935.

THE FRESH FOOD & REFRIGERATING COMPANY LTD. AND SYME & COMPANY AND BEHR & MATTHEW'S LTD. (Third Parties).

[SINGAPORE SUIT No. 1294 of 1935]

Ordinance No. 111 (Civil Law) Section 5 (1)—Law of Property Act 1925 Section 61.—Law Reform (Miscellaneous Provisions) Act 1934 Section 3.

In a mercantile contract entered into in the Colony 'month' *prima facie* means 'calendar month' unless the contract otherwise requires.

Section 3 of the (English) Law Reform (Miscellaneous Provisions) Act 1934 has no local application in the Colony because of the saving clause contained at the end of Section 5 (1) of Ordinance No. 111 (Civil Law) and therefore the Court has no discretion to award interest on unliquidated damages.

Trial of Action.

In this case the Plaintiffs sued the Defendants for damages for breach of a contract in writing contained in two letters whereby the Defendants agreed to engage certain space for cold storage for a cargo of shell and yolk eggs. The main defence was that the Defendants contracted as agents for the owners of the cargo (the third parties) and that the claim if any was against such principals. Alternatively if held liable to the Plaintiffs the Defendants claimed to be indemnified by the third parties. The action duly proceeded and went to trial.

Roland Braddell (*Koek* with him) for the Plaintiffs.

Vaux for the Defendants.

Spenser Wilkinson (*Thorne* with him) for the third parties.

The learned Judge held on the facts that the Defendants had contracted as principals and not on behalf of the third parties. The Defendants' claim for indemnity against the third parties